MAX BARASH
MARVIN J. SONOSKY
WILLIAM R. NOBLE
JOSEPH T. KING

IBLA 71-99 Decided June 15, 1972

Appeal from decision by the New Mexico state office, Bureau of Land Management, which dismissed lessees' protest against termination of oil and gas lease LC 066840.

Affirmed.

Oil and Gas Leases: Extensions

When it is adjudged that an oil and gas lease, extended because of production, no longer has any well capable of producing oil or gas in paying quantities, the lease terminates by operation of law if within 60 days after cessation of production, no reworking or drilling operations are begun on the lease.

Oil and Gas Leases: Extensions

Where production from a lease ceases because the well is no longer capable of production of oil or gas in paying quantities, the lessee is not entitled to the benefits of the provision in section 17 of the Mineral Leasing Act which provides that no lease on which there is a well capable of production shall expire because the lessee fails to produce it unless the lessee is allowed 60 days after notice to place the well on a producing status.

APPEARANCES: Max Barash, for the appellants.

OPINION BY MR. HENRIQUES

Max Barash et al. have appealed from a decision of October 20, 1970, of the New Mexico state office, Bureau of Land Management, which dismissed the appellants' protest against termination of oil

and gas lease LC 066840, and affirmed its decision of August 20, 1970, holding that the aforesaid lease terminated because the only well thereon was determined to be incapable of producing oil or gas in paying quantities, and because no reworking or drilling operations were commenced to restore production within a specified period.

Lease LC 066840 was issued December 1, 1955, for an initial 5-year term and so long thereafter as oil or gas is produced in paying quantities 1/ ; extended to November 30, 1965, pursuant to an application timely filed 2/; extended to October 31, 1967, by partial assignment 3/; and further extended until October 31, 1969, by drilling operations 4/. After October 31, 1969, the lease was held by production from the well designated as the Solar No. 1 Susan Federal in the NE 1/4 NE 1/4 sec. 18, T. 23 S., R. 38 E., N.M.P.M., Lea County, New Mexico. This well was completed on May 13, 1969, into two separate formations, producing initially 81 barrels of oil per day from the Abo Formation, 6908-7290 feet, and 8 barrels of oil per day from the Drinkard Formation, 6638-6797 feet. The only other well drilled on the leasehold was the Federal No. 1 in the SE 1/4 SE 1/4 sec. 18, which was completed January 3, 1968, as a well not capable of producing oil or gas in paying quantities. It was subsequently plugged and abandoned.

The records show that title to the lease is owned as follows: Robert G. Hanagan, 3/4 interest; Max Barash, 1/8; Marvin J. Sonosky, 1/24; William R. Noble, 1/24; Joseph T. King, 1/24. On August 14, 1969, the land office approved an assignment of operating rights to a depth of 7,450 feet in the NE 1/4 NE 1/4 sec. 18 from the lessees to the Solar Oil and Gas Company, and on October 23, 1969, approved an assignment of these operating rights from Solar to Imperial American Management Company.

The last production from the No. 1 Susan Federal well was 156 barrels of oil, 136 mcf of gas, and 1,846 barrels of water during

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1/ 43 CFR 192.40 (1954). The lease embraced W 1/2 SE 1/4 sec. 17, all sec. 18, SE 1/4 SE 1/4 SW 1/4 sec. 30, lot 4, NW 1/4 N 1/2 SW 1/4 sec. 33, T. 23 S., R. 38 E., N.M.P.M.
2/ 43 CFR 192.120 (1954), now 43 CFR 3107.1 (1972).
3/ 43 CFR 3128.5 (1965), now 43 CFR 3107.6-2 (1972).
4/ 43 CFR 3127.2 (1967), now 43 CFR 3107.2 (1972).

December 1969. 5/ Inasmuch as the well was shut in subsequent to such date and in view of the marginal oil production rate and operating costs occasioned by the high water production, the district engineer, Geological Survey, Hobbs, New Mexico, advised Imperial American, as lease operator, by letter of May 26, 1970, sent by certified mail, that production in paying quantities from the well would be considered to have ceased as of May 30, 1970, in the absence of an acceptable showing that the well was capable of producing oil or gas in paying quantities. The letter stated the provisions of 43 CFR 3127.3(a) (now 43 CFR 3107.3-1). A copy of this letter was furnished to Robert G. Hanagan, owner of 3/4 interest in the record title to the lease. The engineer's letter was not a notice to place the well on production status within 60 days pursuant to 43 CFR 3127.3(b) (now 43 CFR 3107.3-2). Inasmuch as reworking or redrilling operations were not commenced within the following 60 day period, and no well test was conducted to show that the district engineer's determination was incorrect, the lease was held to have expired on May 31, 1970, the last day of the month in which the district engineer had determined that the No. 1 Susan Federal well was not capable of producing oil or gas in paying quantities. Under the Mineral Leasing Act, as amended by the act of July 29, 1954, if production ceases on a lease which is in an extended term by reason of production, the

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5/ The provisions of the Mineral Leasing Act governing the termination of leases on which production ceases were amended by the Act of September 2, 1960, Public Law 86-705, 74 Stat. 781, and are set out in 30 U.S.C. § 226 (1970), as follows:

"(f) No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of the Act."

lease terminated by operation of law unless: (1) within 60 days after cessation of production, reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of nonproduction; or, (2) an order or consent of the Secretary suspending operations or production on the lease has been issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time, not less than 60 days after notice to do so, and thereafter continues production unless and until the Secretary allows suspension. Steelco Drilling Corporation, 64 I.D. 214 (1957).

The protest by the lessees quoted the language of the 3rd provision of section 17(f) of the Mineral Leasing Act as amended, 30 U.S.C. § 226(f) (1970), covered by 43 CFR 3107.3-2, which requires notice to the lessee in the event such provision is invoked. However, the land office concluded that this portion of the law and regulation was not applicable to the district engineer's action, which was not a notice to place the well on production pursuant to 43 CFR 3107.3-2, but rather was a determination that the No. 1 Susan Federal well was not capable of producing oil or gas in paying quantities in the absence of an acceptable showing that such determination was incorrect. No such showing has been made. The land office decision specifically referred to the language of 43 CFR 3107.3-1, which is based on the first provision of section 17(f) of the Mineral Leasing Act, as amended. Accordingly, the protest advising that "Notice was apparently served by registered or certified mail on the Imperial Management Company who was the operator of the No. 1 Susan Federal well in the NE 1/4 NE 1/4 sec. 18, T. 23 S., R. 38 E., N.M.P.M.," and the point that service by registered or certified mail was not properly made on all the lessees of record have no merit because the district engineer's letter of May 26, 1970, was not issued under the portion of the Act which requires service on the lessees.

Where production from a lease ceases because the well is no longer capable of production, the lessee is not entitled to the benefits of the provision in section 17 of the Mineral Leasing Act which provides that no lease on which there is a well capable of production shall expire because the lessee fails to produce it unless the lessee is allowed not less than 60 days after notice to place the well on a producing status. Steelco Drilling Corporation, supra.

Inasmuch as the district engineer had determined that the No. 1 Susan Federal well was not capable of producing oil or gas

in paying quantities, the land office concluded that the third provision of section 17(f) of the Act as amended by the Act of September 2, 1960, quoted by the protestants, is not applicable with respect to the situation involved in the protest; and that such provision would apply only to a lease which contained a well capable of production of oil or gas in paying quantities but which is not being produced for some reason.

The appellant's contentions of error are similar in nature to those made previously in their formal protest to the land office.

We reject the appellant's contentions as being without foundation and find that the decision of the land office was correct. No showing has been made by the appellant that the No. 1 Susan Federal well was capable of producing oil or gas in paying quantities after May 31, 1970.

Since reworking or drilling operations required by the first provision of subsection (f) of 30 U.S.C. § 226 (1970) were not conducted on the leasehold for the period of nonproduction, since there has been no order or consent of the Secretary suspending operations or production on the lease, and since the lease does not contain a well capable of producing oil or gas in paying quantities, the appellants' lease was not continued under any of the provisions of subsection (f) of 30 U.S.C. § 226. Accordingly, the decision holding that lease LC 066840 terminated by operation of law on May 31, 1970, was correct.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Douglas E. Henriques, Member

We concur:

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Joseph W. Goss, Member

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Anne Poindexter Lewis, Member